IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 746 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

RAHIMKHAN S PATHAN

Appearance:

MR ASHISH M DAGLI for Petitioner

MR BG JANI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 12/06/2001

ORAL JUDGEMENT

The present Special Civil Application is filed by the Gujarat State Road Transport Corporation Limited challenging the award passed by the Industrial Tribunal (Ahmedabad) in Reference (IT) No.176 of 1993. In that

Reference what was under challenge was the order of the appellate authority of the ST Corporation whereby the annual increment for one year with permanent effect was stopped by an order dated 30th March 1991.

2 The facts of the case are that the present driver had on 1.7.1986 while driving the bus on Mehsana-Becharaji route had met with an accident and a person named Amtabhai Prajapati aged 55 years resident of Jothana had died in that accident. As usual, a criminal case was filed under Section 279 and 304 of IPC and Section 112 and 116 of Motor Vehicles Act in the court of the JMFC (2nd Court), Mehsana. That criminal proceedings ended in an acquittal as the learned Judge had come to the conclusion that as there was no evidence the accused is required to be acquitted. The department had decided to hold a departmental enquiry against the driver. In that departmental enquiry the driver was held to be guilty and therefore punishment of stoppage of three increments with permanent effect was imposed. Against which a departmental appeal was preferred and in that appeal the aforesaid order of penalty was modifed to stoppage of one increment for one year with permanent effect. Against the order passed in appeal a reference was filed in which the learned Judge has cancelled both the orders passed by the disciplinary authority and also by the appellate authority. The learned Judge also ordered payment of all consequential benefits to the employee and payment of Rs.2,000/= by way of costs to the employee. It is this order which is under challenge before this Court.

3 The reasoning which is given in para 11 by the learned Judge is that the plea of the Corporation wherein it was contended that the incident is that of 1.7.1986 and that the order of punishment was passed on 31.3.1991 the Corporation is not in possession of the documentary evidence in view of the Rule that the documents are to be preserved only for a period of five years. It is stated that after the incident of 1.7.1986 the departmental proceedings were initiated and after the order was passed in departmental proceedings an appeal was preferred but on the completion of five years the record was destroyed. Taking into consideration that the departmental enquiry was concluded in the year 1991, period of five years would be over in the year 1996. The learned Judge has allowed the said Reference only on the ground that the ST Corporation has not produced any oral or documentary evidence against the claim of the employee and therefore the Tribunal has no option than to accept the case of the employee. The Tribunal has also observed that only

because an accident has taken place, it cannot be presumed that the driver was negligent and that the accident has taken place only on account of negligent driving on the part of the Driver. The learned Judge has failed to appreciate that in the departmental proceedings the guilt of the driver was proved and the department had come to the conclusion that the delinquent was guilty of the charges levelled against him. Therefore the penalty was imposed, of stoppage of three increments with permanent effect. The appellate authority after taking into consideration the merits of the case has reduced the penalty from stoppage of three increments to stoppage of one increment with permanent effect. Therefore, there was no reason for the Tribunal to interfere with the order of the appellate authority.

4 The petition is allowed. The order of the learned Judge is hereby quashed and set aside. The order of the appellate authority of inflicting the penalty of stoppage of one increment with permanent effect is upheld.

(Ravi R Tripathi, J.)
(mohd)